Frank J. Lozoya IV (SBN161640)
LAW OFFICES OF LOZOYA & LOZOYA
15060 Ventura Blvd., Suite 211
Sherman Oaks, California 91403
Telephone: 818-789-7150
Facsimile: 818-789-7190

Attorneys for Plaintiffs,
JOAN G. LOZOYA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOAN G. LOZOYA, Plaintiff, v. ERIC J. ANDERSON, M.D.; LINDSY BLAKE, M.D.; HOSPITAL CORPORATION OF AMERICA, INC.; MOUNTAIN VIEW HOSPITAL; FREEMONT EMERGENCY SERVICE, INC.; ALEXANDRA E. PAGE, M.D.; KAISER FOUNDATION HEALTH PLAN, INC.; KAISER PERMANENTE and DOES 1 through 30, inclusive, Defendant(s).	CASE NO. 07CV-2148IEG (WMC) **PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DAMAGES and JURY DEMAND**

Plaintiffs, JOAN G. LOZOYA, hereby allege as follows:

GENERAL ALLEGATIONS

1. This action arises under the 42 U.S.C. § 1395dd *et al*, the Emergency Medical Treatment and Active Labor Act (EMTALA); and California and Nevada statutory and common law. Federal subject matter jurisdiction of the federal claims alleged below are provided, in whole or in part, by 28 U.S.C. §§1331, 1337(a) and 1343(4). Supplemental jurisdiction of the state law claims is provided by 42 U.S.C. 1367(a). Venue is appropriate in the San Diego division of this federal judicial district inasmuch as most or all the events upon which liability is

predicated took place within the County of San Diego.

2. At all times material hereto, Plaintiff, JOAN G. LOZOYA, is and has been a resident of San Diego County, State of California.

3. At all times material hereto, Defendant, ALEXANDRA E. PAGE, M.D., was and is a licensed physician practicing in the County of San Diego, State of California.

4. At all times material hereto, Defendant, ERIC J. ANDERSON, M.D., was and is a licensed physician practicing in Clark County, State of Nevada.

5. At all times material hereto, Defendant, LINDSY BLAKE, M.D., was and is a licensed physician practicing in Clark County, State of Nevada.

6. At all times material hereto, Defendant, MOUNTAIN VIEW HOSPITAL and licensed medical facility in Clark County, State of Nevada.

7. At all times material hereto, Defendant, HOSPITAL CORPORATION OF AMERICA, INC. Owns and operates the licensed medical facility identified as Defendant, MOUNTAIN VIEW HOSPITAL, and has its place of business in the State of Nevada and California.

8. At all times material hereto, Defendant, FREEMONT EMERGENCY SERVICE, INC., and licensed medical facility in Clark County, State of Nevada.

9. At all times material hereto, Defendant, KAISER FOUNDATION HEALTH PLAN, INC. owns and operates licensed medical facility in the State of California and doing business in San Diego County, State of California.

10. At all times material hereto, Defendant, KAISER PERMANENTE owns and operates licensed medical facility in the State of California and doing business in San Diego County, State of California.

11. The true names and capacities, whether individual, corporate, associate or otherwise, of DOE Defendants, 1 through 30, inclusive, and each of them, are unknown to plaintiffs at this time, and therefore plaintiffs sue said DOE defendants, and each of them, by said fictitious names and will ask leave of the Court to amend their complaint to show their true names and capacities when the same are ascertained. Plaintiffs are informed and believe and thereon allege that defendants, and each of them, are responsible in some manner for the occurrences

herein alleged and are the proximate cause of plaintiffs' injuries.

12. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned, defendants, and each of them, were and are agents and employees of the remaining defendants, and in doing the things alleged herein, acted within the course, scope, and duty of employment with such agency.

13. On or about November 8, 2006, Plaintiff, JOAN G. LOZOYA, was injured in a fall and was transported to MOUNTAIN VIEW HOSPITAL for requested medical attention.

14. Upon arriving at MOUNTAIN VIEW HOSPITAL, Plaintiff was seen by Defendants, ERIC J. ANDERSON, M.D. and LINDSY BLAKE, M.D.

15. Plaintiff, JOAN G. LOZOYA was advised that she had a severe fracture of her right shoulder. Plaintiff was advised by Defendants, ERIC J. ANDERSON, M.D., LINDSY BLAKE, M.D., MOUNTAIN VIEW HOSPITAL and HOSPITAL CORPORATION OF AMERICA, INC., that they would place her in a sling, provide her with some pain killers but failed to transport her to San Diego for medical treatment in San Diego.

16. Plaintiff, JOAN G. LOZOYA requested of the Defendants, ERIC J. ANDERSON, M.D., LINDSY BLAKE, M.D., MOUNTAIN VIEW HOSPITAL and HOSPITAL CORPORATION OF AMERICA, INC., that she not be transported to San Diego, that Plaintiff immediately be seen by an orthopedic specialist and that Plaintiff be treated by Defendants at Defendants facility in Nevada.

17. Defendants, ERIC J. ANDERSON, M.D., LINDSY BLAKE, M.D., MOUNTAIN VIEW HOSPITAL and HOSPITAL CORPORATION OF AMERICA, INC., and each of them, refused to treat Plaintiff, refused to request an immediate orthopedic specialist consult and failed to stabilize Plaintiff's emergency injuries before forcing Plaintiff to be transferred to San Diego without arranging for or providing any medical transportation.

18. On or about November 11, 2006, Plaintiff was seen in the emergency department of Defendant, KAISER FOUNDATION HEALTH PLAN, INC. and KAISER PERMANENTE.

19. Plaintiff was then followed in the fracture clinic where on November 14, 2006, surgery was performed by Defendant, ALEXANDRA E. PAGE, M.D.

20. In providing medical care and treatment to Plaintiff, Defendants, ERIC J. ANDERSON, M.D.; LINDSY BLAKE, M.D.; HOSPITAL CORPORATION OF AMERICA, INC.; MOUNTAIN VIEW HOSPITAL; ALEXANDRA E. PAGE, M.D.; KAISER FOUNDATION HEALTH PLAN, INC.; KAISER PERMANENTE and DOES 1 through 30, inclusive, and each of them, including their nursing staff and other employees, failed to provide necessary and proper medical care for plaintiff's medical condition, to which plaintiff was owed a duty of the proper medical care for this community of physicians.

21. Plaintiff’s surgery was not successful and resulted in an additional surgery that has now left Plaintiff permanently maimed and disfigured and Plaintiff suffers loss of use of her arm, impairment of enjoyment of life, suffers significant pain and discomfort, emotional distress and will continue to incur medical costs and expenses in the future, as well s related damages and losses not yet known but arising out of and proximately caused by the conduct of Defendants, ERIC J. ANDERSON, M.D.; LINDSY BLAKE, M.D.; HOSPITAL CORPORATION OF AMERICA, INC.; MOUNTAIN VIEW HOSPITAL; ALEXANDRA E. PAGE, M.D.; KAISER FOUNDATION HEALTH PLAN, INC.; KAISER PERMANENTE and DOES 1 through 30, inclusive, and each of them.

22. Plaintiff, JOAN G. LOZOYA discovered, sometime after April 4, 2007 the injuries sustained was the a failure of the Defendants, and each of them, to properly exercise the proper degree of knowledge and skill in examining, diagnosing, treating, and caring for Plaintiff’s medical condition.

23. Thereafter, pursuant to *Code of Civil Procedure* §364, Defendants were given proper notice of Plaintiffs’ intent to file a medical malpractice action against said Defendants.

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FIRST CAUSE OF ACTION VIOLATION OF 42 U.S.C. § 1395dd *et al*; the Emergency Medical Treatment and Active Labor Act (EMTALA); (Plaintiff As Against HOSPITAL CORPORATION OF AMERICA, INC.; FREEMONT EMERGENCY SERVICE, INC., MOUNTAIN VIEW HOSPITAL & DOES 1 through 30)

24. Plaintiffs JOAN G. LOZOYA, reallege paragraph 1 through 23 of this Complaint and incorporate those paragraphs under this Cause of action as though fully set forth herein.

25. At all times material hereto, Defendant, MOUNTAIN VIEW HOSPITAL and licensed medical facility in Clark County, State of Nevada.

26. At all times material hereto, Defendant, FREEMONT EMERGENCY SERVICE, INC., and licensed medical facility in Clark County, State of Nevada.

27. At all times material hereto, Defendant, HOSPITAL CORPORATION OF AMERICA, INC. Owns and operates the licensed medical facility identified as Defendant, MOUNTAIN VIEW HOSPITAL, and has its place of business in the State of Nevada and California.

28. The medical facilities of Defendants, FREEMONT EMERGENCY SERVICE, INC., MOUNTAIN VIEW HOSPITAL and HOSPITAL CORPORATION OF AMERICA, INC., are governed by 42 U.S.C. § 1395dd *et al.*; the Emergency Medical Treatment and Active Labor Act (EMTALA) as well as *42 CFR Ch. IV, §489.24 et seq*., and related requirements of *42 CFR §489.20(1), (m), (q)* and *(r)*.

29. On or about November 8, 2006, Plaintiff, JOAN G. LOZOYA, was injured in a fall and was transported to MOUNTAIN VIEW HOSPITAL for requested medical attention.

30. Upon arriving at MOUNTAIN VIEW HOSPITAL and FREEMONT EMERGENCY SERVICE, INC., Plaintiff was seen by Defendants, ERIC J. ANDERSON, M.D. and LINDSY BLAKE, M.D.

31. Plaintiff, JOAN G. LOZOYA was advised that she had a severe fracture of her right shoulder. Plaintiff was advised by Defendants, ERIC J. ANDERSON, M.D., LINDSY BLAKE, M.D., MOUNTAIN VIEW HOSPITAL, FREEMONT EMERGENCY SERVICE, INC. and HOSPITAL CORPORATION OF AMERICA, INC., that they would place her in a sling, provide her with some pain killers but that they would not transport her to San Diego

for medical treatment in San Diego after refusing to treat her further.

32. Plaintiff, Plaintiff, JOAN G. LOZOYA requested of the Defendants, ERIC J. ANDERSON, M.D., LINDSY BLAKE, M.D., MOUNTAIN VIEW HOSPITAL, FREEMONT EMERGENCY SERVICE, INC. and HOSPITAL CORPORATION OF AMERICA, INC., that she not be transported to San Diego, that Plaintiff be seen by an orthopedic specialist and that Plaintiff be treated by Defendants at Defendants facility in Nevada with an orthopedic.

33. Defendants, ERIC J. ANDERSON, M.D., LINDSY BLAKE, M.D., MOUNTAIN VIEW HOSPITAL, FREEMONT EMERGENCY SERVICE, INC. and HOSPITAL CORPORATION OF AMERICA, INC., and each of them, violated the EMTALA by refusing to treat Plaintiff, refusing to request an immediate orthopedic specialist consult, refusing and failing to properly stabilize Plaintiff's emergency injuries, and forcing Plaintiff's improper transfer to San Diego, failing to provide medical transportation and refusing to properly care for Plaintiff. Defendants by improperly, in violation of the standard of care, treating, consulting, and diagnosing the Plaintiff, caused Plaintiff significant personal injuries.

34. Defendants, ERIC J. ANDERSON, M.D.; LINDSY BLAKE, M.D.; HOSPITAL CORPORATION OF AMERICA, INC.; FREEMONT EMERGENCY SERVICE, INC., MOUNTAIN VIEW HOSPITAL and DOES 1 through 30, inclusive, and each of them, including their nursing staff and other employees, also violated EMTALA by failing to provide necessary and proper medical care for plaintiff's medical condition, to which plaintiff was owed a duty of the proper medical care for this community of physicians.

35. As a result of the conduct of the named Defendants' herein, Plaintiff suffers loss of use of her arm, impairment of enjoyment of life, suffers significant pain and discomfort, emotional distress and will continue to incur medical costs and expenses in the future, as well as related damages and losses not yet known but arising out of and proximately caused by the conduct of Defendants, ERIC J. ANDERSON, M.D.; LINDSY BLAKE, M.D.; HOSPITAL CORPORATION OF AMERICA, INC.; FREEMONT EMERGENCY SERVICE, INC., MOUNTAIN VIEW HOSPITAL and DOES 1 through 30, inclusive, and each of them.

36. Plaintiff, JOAN G. LOZOYA discovered, sometime after April 4, 2007 the personal injuries sustained were a proximate result of the Defendants' EMTALA violation.

SECOND CAUSE OF ACTION

Medical Malpractice - Negligence

(Plaintiff As Against Defendants ERIC J. ANDERSON, M.D.; LINDSY BLAKE, M.D., HOSPITAL CORPORATION OF AMERICA, INC.; FREEMONT EMERGENCY SERVICE, INC., MOUNTAIN VIEW HOSPITAL & DOES 1 through 30)

37. Plaintiffs JOAN G. LOZOYA, reallege paragraph 1 through 36 of this Complaint and incorporate those paragraphs under this Cause of action as though fully set forth herein.

38. At all times material hereto, Defendant, ERIC J. ANDERSON, M.D., was and is a licensed physician practicing in Clark County, State of Nevada.

39. At all times material hereto, Defendant, LINDSY BLAKE, M.D., was and is a licensed physician practicing in Clark County, State of Nevada.

40. At all times material hereto, Defendant, FREEMONT EMERGENCY SERVICE, INC., and licensed medical facility in Clark County, State of Nevada.

41. At all times material hereto, Defendant, MOUNTAIN VIEW HOSPITAL and licensed medical facility in Clark County, State of Nevada.

42. At all times material hereto, Defendant, HOSPITAL CORPORATION OF AMERICA, INC. owns and operates the licensed medical facility identified as Defendant, MOUNTAIN VIEW HOSPITAL, and has its place of business in the State of Nevada and California.

43. On or about November 8, 2006, Plaintiff, JOAN G. LOZOYA, was injured in a fall and was transported to MOUNTAIN VIEW HOSPITAL for requested medical attention.

44. Upon arriving at MOUNTAIN VIEW HOSPITAL and FREEMONT EMERGENCY SERVICE, INC., Plaintiff was seen by Defendants, ERIC J. ANDERSON, M.D. and LINDSY BLAKE, M.D.

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45. Plaintiff, JOAN G. LOZOYA was advised that she had a severe fracture of her right shoulder. Plaintiff was advised by Defendants, ERIC J. ANDERSON, M.D., LINDSY BLAKE, M.D., MOUNTAIN VIEW HOSPITAL, FREEMONT EMERGENCY SERVICE, INC. and HOSPITAL CORPORATION OF AMERICA, INC., that they would place her in a sling, provide her with some pain killers but that they would not transport her to San Diego for medical treatment in San Diego after refusing to treat her further.

46. Plaintiff, Plaintiff, JOAN G. LOZOYA requested of the Defendants, ERIC J. ANDERSON, M.D., LINDSY BLAKE, M.D., MOUNTAIN VIEW HOSPITAL, FREEMONT EMERGENCY SERVICE, INC. and HOSPITAL CORPORATION OF AMERICA, INC., that she not be transported to San Diego, that Plaintiff be seen by an orthopedic specialist and that Plaintiff be treated by Defendants at Defendants facility in Nevada with an orthopedic.

47. Defendants, ERIC J. ANDERSON, M.D., LINDSY BLAKE, M.D., MOUNTAIN VIEW HOSPITAL, FREEMONT EMERGENCY SERVICE, INC. and HOSPITAL CORPORATION OF AMERICA, INC., and each of them, violated the EMTALA by refusing to treat Plaintiff, refusing to request an immediate orthopedic specialist consult, refusing and failing to properly stabilize Plaintiff's emergency injuries, and forcing Plaintiff's improper transfer to San Diego, failing to provide medical transportation and refusing to properly care for Plaintiff. Defendants by improperly, in violation of the standard of care, treating, consulting, and diagnosing the Plaintiff, caused Plaintiff significant personal injuries.

48. Defendants, ERIC J. ANDERSON, M.D.; LINDSY BLAKE, M.D.; HOSPITAL CORPORATION OF AMERICA, INC.; FREEMONT EMERGENCY SERVICE, INC., MOUNTAIN VIEW HOSPITAL and DOES 1 through 30, inclusive, and each of them, including their nursing staff and other employees, also violated EMTALA by failing to provide necessary and proper medical care for plaintiff's medical condition, to which plaintiff was owed a duty of the proper medical care for this community of physicians.

49. Defendants, ERIC J. ANDERSON, M.D.; LINDSY BLAKE, M.D.; HOSPITAL CORPORATION OF AMERICA, INC.; FREEMONT EMERGENCY SERVICE, INC., MOUNTAIN VIEW HOSPITAL and DOES 1 through 30, including their nursing staff and other employees, failed to exercise that degree of knowledge and skill ordinarily possessed and exercised by other physicians, hospitals, nurses, attendants, consultants, employees for plaintiff's medical condition, to which plaintiff was owed a duty of proper medical care from this community of physicians, staff, agents and employees.

50. As a result of the conduct of the named Defendants' herein, Plaintiff suffers loss of use of her arm, impairment of enjoyment of life, suffers significant pain and discomfort, emotional distress and will continue to incur medical costs and expenses in the future, as well s related damages and losses not yet known but arising out of and proximately caused by the conduct of Defendants, ERIC J. ANDERSON, M.D.; LINDSY BLAKE, M.D.; HOSPITAL CORPORATION OF AMERICA, INC.; MOUNTAIN VIEW HOSPITAL and DOES 1 through 30, inclusive, and each of them.

51. As a legal and proximate cause of this breach of duty by the Defendants, and each of them, they caused serious injury to Plaintiff as described herein above. As a result of the conduct of the defendants, and each of them, Plaintiffs have suffered damages in a sum to be proven at trial but within the jurisdictional of this court.

52. Plaintiff, JOAN G. LOZOYA discovered, sometime after April 4, 2007 the personal injuries sustained were a proximate result of the Defendants' negligent conduct as described herein.

THIRD CAUSE OF ACTION

Medical Malpractice - Negligence

(Plaintiff As Against Defendants ALEXANDRA E. PAGE, M.D., KAISER FOUNDATION HEALTH PLAN, INC., KAISER PERMANENTE & DOES 1 through 30)

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53. Plaintiffs JOAN G. LOZOYA, reallege paragraph 1 through 23 of this Complaint and incorporate those paragraphs under this Cause of action as though fully set forth herein.

54. At all times material hereto, Defendant, ALEXANDRA E. PAGE, M.D., was and is a licensed physician practicing in the County of San Diego, State of California.

55. At all times material hereto, Defendant, KAISER FOUNDATION HEALTH PLAN, INC. owns and operates licensed medical facility in the State of California and doing business in San Diego County, State of California.

56. At all times material hereto, Defendant, KAISER PERMANENTE owns and operates licensed medical facility in the State of California and doing business in San Diego County, State of California.

57. On or about November 11, 2006, Plaintiff was seen in the emergency department of Defendant, KAISER FOUNDATION HEALTH PLAN, INC. and KAISER PERMANENTE.

58. Plaintiff was then followed in the fracture clinic o where on November 14, 2006, surgery was performed by Defendant, ALEXANDRA E. PAGE, M.D.

59. In providing medical care and treatment to Plaintiff, Defendants, ALEXANDRA E. PAGE, M.D.; KAISER FOUNDATION HEALTH PLAN, INC.; KAISER PERMANENTE and DOES 1 through 30, inclusive, and each of them, including their nursing staff and other employees, failed to provide necessary and proper medical care for plaintiff's medical condition, to which plaintiff was owed a duty of the proper medical care for this community of physicians.

60. Defendants, ALEXANDRA E. PAGE, M.D.; KAISER FOUNDATION HEALTH PLAN, INC.; KAISER PERMANENTE and DOES 1 through 30, inclusive, including their nursing staff and other employees, failed to exercise that degree of knowledge and skill ordinarily possessed and exercised by other physicians, hospitals, nurses, attendants, consultants, employees for plaintiff's medical condition, to which plaintiff was owed a duty of proper medical care from this community of physicians, staff, agents and employees.

61. As a result of the conduct of the named Defendants' herein, Plaintiff suffers loss of use of her arm, impairment of enjoyment of life, suffers significant pain and discomfort, emotional distress and will continue to incur medical costs and expenses in the future, as well s related damages and losses not yet known but arising out of and proximately caused by the conduct of Defendants, ALEXANDRA E. PAGE, M.D.; KAISER FOUNDATION HEALTH PLAN, INC.; KAISER PERMANENTE and DOES 1 through 30, inclusive, and each of them.

62. As a legal and proximate cause of this breach of duty by the Defendants, and each of them, they caused serious injury to Plaintiff as described herein above. As a result of the conduct of the defendants, and each of them, Plaintiffs have suffered damages in a sum to be proven at trial but within the jurisdictional of this court.

63. Plaintiff, JOAN G. LOZOYA discovered, sometime after April 4, 2007 the personal injuries sustained were a proximate result of the Defendants' negligent conduct as described herein.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, JOAN G. LOZOYA prays for judgment against the Defendants, and each of them, as follows:

FIRST CAUSE OF ACTION

a. General Damages according to proof at the time of trial;

b. Special Damages according to proof at the time of trial;

c. For the civil penalty allowed under the EMTALA;

d. For costs of suit herein incurred according to proof at the time of trial;

e. For prejudgment interest from the date of harm or breach and/or from the date of filing; and

f. For such other and further relief as this Court may deem necessary and proper.

SECOND CAUSE OF ACTION

a. General Damages according to proof at the time of trial;

b. Special Damages according to proof at the time of trial;

c. For costs of suit herein incurred according to proof at the time of trial;

d. For prejudgment interest from the date of harm or breach and/or from the date of filing; and

e. For such other and further relief as this Court may deem necessary and proper.

THIRD CAUSE OF ACTION

a. General Damages according to proof at the time of trial;

b. Special Damages according to proof at the time of trial;

c. For costs of suit herein incurred according to proof at the time of trial;

d. For prejudgment interest from the date of harm or breach and/or from the date of filing; and

e. For such other and further relief as this Court may deem necessary and proper.

REQUEST FOR TRIAL BY JURY

Plaintiff, JOAN G. LOZOYA hereby demands a jury trial of all issues so triable.

Dated: December 28, 2007

LAW OFFICES OF LOZOYA & LOZOYA

Signature not verified!

Digitally signed by: Frank J. Lozoya IV, Esq.
DN: CN = Frank J. Lozoya IV, Esq. C = US O = Law Offices of Lozoya & Lozoya
Date: 2008.01.04 13:45:38 -08'00'
Reason: I am the author of this document

FRANK J. LOZOYA IV
Attorneys for Plaintiff,
JOAN G. LOZOYA